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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:
CITY OF STOCKTON, CALIFORNIA,
Debtor.

Case No. 12-32118

DCNo. OHS-14

**DECLARATION OF PATRICK FILIPPONE
IN SUPPORT OF OPPOSITION TO THE
CITY'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS BY 7TH
INNING STRETCH, LLC**

Date: October 28, 2013

Time: 10:00 a.m.

Dept: Courtroom 35

I, Patrick Filippone, declare:

1. Since July 2006, I have been President of 7th Inning Stretch, which owns and operates the Stockton Ports. Previously, from 1999 through 2003, I was the General Manager of the Rancho Cucamonga Quakes, which is also a California League team like the Ports. Then, from 2003 through 2006, I was the President of the Fresno Grizzlies, an AAA team in the Pacific Coast League. I am the primary negotiator for 7th Inning Stretch in its negotiations with the City of Stockton, California.

2. I make this declaration from my own personal knowledge or from the business records of 7th Inning Stretch, which are made contemporaneously and kept in the ordinary course of business operations. If called to testify, I could and would testify competently to the matters set forth in this declaration.

3. 7th Inning Stretch is a small, privately-owned business. 7th Inning Stretch does not manage the Stockton Ports' baseball operations. Instead, the parent Major League Baseball club, the Oakland A's, controls virtually all baseball operations. Consequently, 7th Inning Stretch is a marketing and event

1 promotion business.

2 4. The Stockton Ports currently play at a 4,200 seat downtown baseball stadium, Banner Island
3 Ballpark, developed by the City of Stockton in its entertainment district in approximately 2005. Adjacent
4 to the ballpark, the City of Stockton also developed an enclosed arena. The City employs SMG, a leading
5 worldwide entertainment and convention venue management firm, to manage the ballpark, the adjacent
6 arena, as well as other City of Stockton facilities.

7 5. Prior to the opening of the downtown ballpark, the Stockton Ports called Billy Hebert Field--a
8 much older, smaller baseball field--their home field. The Ports leased Billy Hebert Field from the City of
9 Stockton as well.

10 6. During the City's discussions about development of the new downtown baseball stadium, the
11 City asked the Ports if they would like to play their games in the new stadium. 7th Inning Stretch never
12 asked or requested that the City of Stockton develop the new downtown baseball stadium. In fact, when
13 the City revealed its plans for the stadium, 7th Inning Stretch requested that they make it smaller. The
14 City refused.

15 7. Nevertheless, under an agreement between the City of Stockton and 7th Inning Stretch dated
16 March 2, 2004, 7th Inning leases the Banner Island Ballpark developed by the City. The agreement
17 predates the actual construction of the ball park. As part of its agreement, 7th Inning prepaid \$1.2 million
18 in rent to the City of Stockton for the entire 25 year term of the lease. The City has \$768,000 in prepaid
19 but unearned rent from the Ports in its coffers. The agreement provides the Ports year-round exclusive
20 possession of limited portions of the stadium, including some administrative offices, the team store, the
21 radio booth, the Ports locker room, and certain warehouse and storage areas. The agreement also provides
22 the Ports exclusive possession of the remainder of the baseball stadium only during the baseball season
23 during Ports games and Ports non-game events.

24 8. The agreement allocates revenue between the parties for Ports games and certain Ports non-
25 game events. 7th Inning Stretch pays the City a facility fee for each ticket sold, which is currently \$1.25.
26 In addition, 7th Inning Stretch splits the luxury suite revenue with the City 50/50.

27 9. The City receives 80% of any naming rights revenue from the stadium. The agreement gives
28 the City the exclusive right to sell the naming rights. In the nine years since the stadium opened, the City

1 has not seriously attempted to sell the naming rights. 7th Inning Stretch offered to assist the City in selling
2 the naming rights on numerous occasions, but the City has always refused this offer. Throughout the
3 California League, naming rights revenue typically generates an estimated average of \$200,000 per year,
4 although not all teams have a naming rights agreement.

5 10. Finally, the lease agreement requires the City to provide 7th Inning Stretch an operational
6 budget each year for the operational costs of the ballpark. The agreement provides for a Ballpark Fund to
7 pay these operational costs, and the agreement allocates payments by 7th Inning Stretch to the Ballpark
8 Fund. Over the nine years of the lease agreement, 7th Inning has asked for an annual operational budget
9 on numerous occasions. Despite these requests, the City has never provided the budget as required. The
10 lack of this budget casts doubt on the figure of \$547,578 the City alleges it will lose in 2013-2014 from
11 operation of the ballpark. Further, any loss results from the City's utter failure to sell the ballpark naming
12 rights and book additional events at the ballpark, which should provide as much as two thirds of ballpark
13 revenues.

14 11. The terms of the lease agreement with the City are not generally favorable to 7th Inning Stretch
15 when compared to other California League teams. (Montes Declaration, ¶ 3.) The California League
16 conducted a lease expense survey for the 2011 season among the nine teams that lease their ballparks.
17 The survey included all annual costs paid by a team under their lease divided by 70 games. The survey
18 revealed that the Ports agreement with the City is the least favorable in the California League.

19 12. With the Ports games and non-game Ports events, the Ports utilize the baseball stadium
20 approximately one third of each calendar year. The City and SMG have the exclusive right to utilize the
21 baseball stadium during the remaining two thirds of each calendar year, and they receive all revenues from
22 such use, including ticket sales and parking, and a percentage of the concession sales. 7th Inning Stretch
23 does not "control . . . virtually all [S]tadium revenues" as the City asserts. The City and SMG have failed
24 to book additional events to utilize more than two-thirds of the ballpark's revenue-generating capacity. In
25 the past three years, the City and SMG have only booked one additional event and have failed to sell the
26 naming rights. The City and SMG have exclusive control over these revenue sources.

27 13. The City first approached 7th Inning in August 2012 about reviewing and discussing the lease
28 because of their bankruptcy filing. Willingly, 7th Inning met with City officials numerous times to discuss

1 the lease agreement. These discussions led to mediation in November 2012. Prior to the mediation, 7th
2 Inning Stretch presented an offer so the parties could efficiently conduct the mediation. When 7th Inning
3 asked the City for its response, City officials refused. In late December, the City presented offers that 7th
4 Inning rejected.

5 14. 7th Inning did not receive any further communication from the City until late July 2013. Then,
6 Laurie Montes sent an email advising that the City had retained a consultant familiar with the sports
7 facility industry to assist it. She requested that 7th Inning meet with the consultant.

8 15. Again, willingly, 7th Inning Stretch met with Dan Barrett, the founder and principal of Barrett
9 Sports Group, LLC, a sports management consulting firm widely recognized in the industry. In early
10 August, Barrett requested numerous documents pertaining to 7th Inning's operations. For the first time
11 during the negotiations, the City and Barrett requested the financial records of 7th Inning Stretch. The
12 City had never previously requested these records. 7th Inning provided documents related to the lease
13 agreement in a timely manner, but declined to provide documents unrelated to the lease agreement.

14 16. Since this time, 7th Inning Stretch has continued to negotiate with the City's consultant in good
15 faith. 7th Inning Stretch has offered to substantially increase its payments to the City under the lease
16 agreement.

17 17. Throughout the term of 7th Inning Stretch's lease agreement with the City, it has performed as
18 agreed, and the City has never complained or alleged that 7th Inning Stretch has failed to meet its
19 obligations.

20 I declare under penalty of perjury that the foregoing is true and correct. Executed at Stockton,
21 California, on October 24, 2013.

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PAT FILIPPONE